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The Governor and
Executive Organization

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The Relation of the Governor to the Organization of Executive Power in the States

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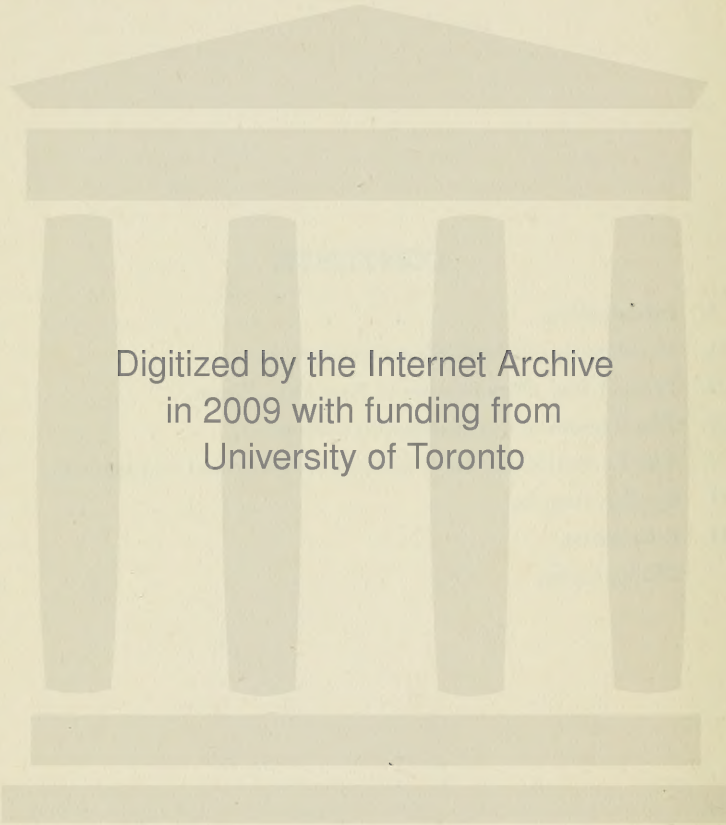
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By LEONARD A. BLUE

NINETEEN HUNDRED AND TWO

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I.

Introduction.

It is the purpose of this study to trace the development of executive power in the states of the United States and to show how the power of the governor has been distributed among recently created administrative agencies to such an extent that the present day governor is shorn of much power which legitimately belongs to him. It is hoped further, to suggest a reorganization of executive power which will restore this in part and better serve the ends for which all government is created.

The prevailing belief among those who have given the matter attention is that the chief executive of a state is such only in name. "The head of the executive department of the state, elected by the people and directly responsible to them, has but little power and few duties, except social and perfunctory" is the opinion of one of our later day governors.¹ The governor is so hedged about by constitutional and statutory provisions that he has become a mere figurehead. His duties are largely clerical. He cannot expend a dollar of public money; nor can he make appointments to offices which carry with them any considerable responsibility. As the states have increased in importance his office has not moved forward either in dignity or honor. There has been no large growth in the military, the veto or pardoning power. The governor has not gained in prestige through his annual message. This document which it was thought would bring him into direct touch with the legislative department has not done so and is read to-day with scarcely more than a passing interest. Where the governor has been instrumental in bringing about reforms it has been because of his personal force, or because of a great popular demand, rather than because of any inherent power residing in the office. It seems to the writer that through the force of circumstances, aside from any political considerations, a large field of state activity has opened within the last half century which not only makes it possible for future governors to become vigorous and strong, but which makes it highly desirable that such should be the case. If there has been any growth of executive power during the last half century of state development, if the state executive has become more vigorous, or if he shall in the future become a positive force in state affairs, the reason must be sought for elsewhere than in the political field. In politics, as the term is popularly used, he must stay where he now is. But there is a large field of administration which is separate from politics, as Professor Goodnow has so forcibly brought out in his recent work upon "Politics and Administration," and it is here that the possibility lies of the state executive becoming not only a positive, vigorous force in the community, but the most useful of the state officials. There are two ways in which this may

¹Gov. Russell of Massachusetts.

be brought about. First, through such a reorganization of the administrative machinery of the state as will bring him into a more intimate connection with the actual carrying on of the public business. Secondly, through an increase in the appointing and removing power, in order that he may select for important public service men who will be efficient and devoted to that service.

The utterances of the governors of several of our states within recent years have called the attention of the public to what has become the chief distinguishing characteristic of modern state administration, viz.: the tendency to conduct administration by means of an appointed board or commission. Few Americans realize the extent to which this has gone. In a general way it is known that there are a great many commissioners and trustees of various sorts in our states, and that the care of certain public institutions is given over to them. But it is not so well known that many of the most important interests with which the state has to deal are in the hands of such boards. We have Boards of Health and Charities in nearly all of our states. The numerous questions arising out of the modern system of transportation, questions affecting commerce and agriculture, the control of our penal and reformatory institutions, are all made the subject of commission government.

These boards and commissions have arisen in response to a well-defined demand for some agency which would carry us over an experimental period in administration, and can hardly be said to be the final answer to the question how best to care for these various interests. They must be considered as having been created especially to meet the wants of social and economic conditions consequent upon a rapid increase in population and wealth, and as first attempts to solve questions which are not yet fully answered.

Having thus been created to meet the exigencies of the moment, they have often apparently been established with little regard to efficiency or to their proper relation to the administrative machinery which already existed. There has been a consequent multiplication of such boards and commissions until New York has to-day nearly one hundred different bodies of commissioners and boards of trustees, while Massachusetts, Pennsylvania and the other more populous states also have a large number. These boards fall into three divisions depending upon the nature of their duties. Certain of them have only power to investigate and report upon their findings; others have semi-judicial powers; a great deal of the executive power of the state has been placed in the hands of a third class.

It is not questioned that for the purposes of investigation and recommendation a board may be an efficient organ of administration. Nor is it the intention to criticise boards with semi-judicial powers, in so far as they perform the work of a court. But where the board has only or chiefly, executive and administrative powers, its necessity and usefulness in our state government may be questioned.

The appointment of the boards of the third class has reacted upon the organization of state executive power in two ways. It has seemingly increased the governor's power in that to him has generally been given

the appointing of the members of the boards; and this has to a certain extent prevented this branch of the governing power from being overshadowed by the legislative and judicial branches. While this is true it has given to the executive but little real power; for though he is able to appoint the members of the boards, he has no voice in the management of the affairs which are entrusted to them.

The number and complexity of these commissions has become so great that students of politics may well give some attention to their usefulness as government agencies. Indeed such an investigation has been suggested by four of New York's governors and two governors of Massachusetts within the last fifteen years.¹ The suggestion has also been made by writers upon legislation and administration that a reorganization in the field of government covered by such commissions would be in the interests of good government and public economy.

The usefulness of these commissions in the past is not here questioned. In the period when their appointment was first begun, the questions with which they had to deal were new and untried. Experiments had to be made, information gathered, and suggestions offered. And for these purposes there can be no doubt as to the efficacy of a commission. We are no longer in the tentative stage in a great deal of our state administration, and need no longer adhere to tentative methods. We are able to say with definiteness what we desire with reference to a great many questions about which in the past we have been inquiring and experimenting. Is it not time for us to reorganize our system of administration, and inaugurate a policy which has unity and system coupled with a proper responsibility to the people? It is suggested that the present system has taken power which is properly executive and placed it beyond the reach of the executive department of our government. This has resulted in a diminution of the power of that department in comparison with that of the legislative and judicial departments. The condition of affairs at present is such that the liberty of the people can only be guaranteed to them by a restoration of at least a part of this power to the executive. It is manifestly undesirable to elect all the officers of the state administration. They must be appointed. But if appointed they must, by some means, be held accountable for their actions. This responsibility might be secured by giving to the governor of the state the power to appoint heads of departments who should be at all times responsible to him and subject to his removal. Under them the various interests which are now under commissions could be cared for through deputies, at less expense and at a gaining in efficiency over the present. Then if the governor were held responsible for the whole of the administration of the state, as he should be, the people would be possessed of an effectual check upon his conduct. This principle is familiar to us in the government of most of our large cities of to-day, and though the wisdom of the system has been questioned it nevertheless seems to be the only feasible plan under our present conditions.

¹Governors Hill, Morton, Flower and Odell in New York, and Greenhalge in Massachusetts, have referred to these matters in recent messages. Fairlie, Whitten, Webster and Goodnow, in published discussions, have also dealt with the subject.

II.

Development of State Executive Power.

American state as well as federal government is founded upon the doctrine of the "separation of powers" which came into modern political thought with its clear enunciation by Montesquieu. Throughout the history of state government the struggle for precedence is seen. Early constitution makers were very definite in their statements as to this matter as the following from the Declaration of Rights of Massachusetts, which is a type of several others, will indicate: "The legislative department shall never exercise the executive and judicial powers or either of them; the executive shall never exercise the legislative and judicial powers or either of them; the judicial shall never exercise the executive and legislative powers or either of them."¹

When the makers of our first state constitutions began their work, this principle was adopted by them: but in the constitutions they made there is an apparent desertion of it, especially as regards the powers of the executive department. They had only colonial experience as their guide, and this had taught them both the danger of a strong executive such as the colonial governor had been, and the advantage of a legislature strong enough to carry on the government, if need be, irrespective of the wishes or policy of the executive. The colonial governor stood for irresponsible power and consequent oppression without recourse.²

To correct this defect the constitution makers changed what had been a strong executive into an officer whose every movement was hampered by restrictions either in the constitutions or in the acts of the legislature. This tendency was early noticed by the thoughtful men of the period, and many warnings were given by them of the dangers which would inevitably arise from such a policy. "Experience proves," said Madison in the convention of 1787, "a tendency in our governments to throw all power into the legislative vortex. The executives of our states are little more than ciphers. The legislatures are omnipotent. If no effectual check be devised on the encroachments of the latter, a revolution will be inevitable."³

The historian Bancroft says "the legislature was the center of the system. The governor had no power to dissolve it, or either branch. In most of the states all important civil and military officers were elected by the legislature. The scanty power entrusted to the governor, wherever his power was more than a shadow, was still further restrained by an executive council. Where the governor had the nomination of officers they could be commissioned only by the consent of the council."⁴

The governor was elected by the legislature in nine of the original

¹Sec. 30, Massachusetts Declaration of Rights.

²See Green: *The Provincial Governor*.

³Quoted in Bancroft, Vol. IX, Chap. 15.

⁴Vol. IX, Chap. 15.

thirteen states, and for short terms, with no chance of reelection. The rule in Tennessee was that he was eligible but for one year in ten, but by the ordinary rule he might hold office for two or three years, and then he became ineligible for the following three or four years. He had, as a rule, no veto power, and only a limited pardoning power. In no state could he wield the appointing power singly, and in several not at all. Administrative officers were almost universally elected by the legislatures. The executive was everywhere feared, and definite provision was made in nearly all of the early constitutions for the curtailment of any possible power which he might get into his hands. The provision of the Virginia constitution of 1776 will serve as a type of these constitutional provisions. "A governor or chief magistrate shall be chosen annually by the joint ballot of both houses; (he) shall with the advice and consent of the Council of State, exercise the executive power of the government, and shall not under any pretense, exercise any power or prerogative by virtue of any law, statute or custom of England. But he shall with the advice and consent of the Council of State have the power of granting reprieves or pardons, except when the prosecution has been carried on by the house of delegates; (he) shall not prorogue nor adjourn the assembly during their sitting, nor dissolve them at any time."¹

It will be readily conceded by all students of the period, that at the opening of the nineteenth century, the excess of executive power which had characterized the eighteenth century, had been taken away from that department and lodged with the legislature. The governor was still commander in chief of the military forces of the state; he was kept in touch with the legislature by means of annual and special messages. In some few cases he had the pardoning power and a restricted veto power. But his power ended here. There was no provision whereby he could touch or influence state administration. The appointing power, where granted at all, was small and generally so restricted that it amounted to a mere recording of the wishes of some other body of men. So confident were the people that they had accomplished the complete subjugation of this officer, that an evident indifference appears in the constitutions both as to the office and its incumbent. This is well illustrated in the qualifications which were required of candidates for the governorship. They demand that he shall be "some fit person,"¹ or that he shall be a "wise and discreet free-holder,"² or a person of "wisdom, experience and virtue."³ while in several states he was to have only the qualifications of the ordinary legislator.⁴ There were, it is true, certain qualifications as to age, property and religion; but these only reflect the ideas of the times as to all officers, and do not indicate an increase in the esteem in which the gubernatorial office was held. This determination to curb the executive is seen in the fact that in nearly all of the states he was to be

¹Poore's Constitutions, II. 1191. For this whole period see also Davis, American State Constitutions, J. H. U. Studies, 3d Series. Jameson, J. H. U. Studies, 9th Series—An introduction to the study of the constitutional and political history of the states. Federalist Nos. 45, 46, 47. Jefferson, Notes on Va. Webster, State Constitutions of the Revolution.

¹N. J.

²N. Y.

³Md.

⁴Pa., Vt., Ga., S. C.

checked by an executive council of from three to twelve, elected by the legislature either from their own members or from the people.

At the beginning of the constitutional period of American history, almost the entire executive and administrative, as well as the entire legislative power in the states, was lodged in the legislative department, notwithstanding the paper assertions upon the doctrine of complete separation of powers. In national politics this tendency is discernible in the rapid transformation of thought which resulted in the rise and victory of republican over federalist principles. Republican success meant an increase of the power of the people through their representatives. It meant in many cases, an increase of popular control over all departments of government. And especially was it a declaration on the part of the people against any strengthening of the executive, and against any centralizing tendencies which might appear as to administration.

The popular revolt against class rule, which followed upon the downfall of the Federalist party, was perhaps the leading characteristic of the first quarter of the nineteenth century. It was seen in national politics in the democratic and economical tendencies of Jefferson Democrats. In both state and national politics it manifested itself in the increasingly larger number of offices which were filled by popular election. At the opening of this period there was a universal opening of new lands in the west and northwest, and the influences of this phenomenon acted directly upon the new constitutions, and reacted upon the older ones in amendments and revisions. It is a matter of considerable question whether the ideas of the French philosophy, which became embodied in the principles of the Republican party could have taken root and spread as they did, had it not been for this fact. While it is true that political conditions were such as to hasten the spread of the "rights of man," economical conditions also favored every increase of such rights. It is true, it seems, that whenever new lands are opened up and preempted, there is a noticeable increase in both the formal rights contained in the written laws of the country, and also of the substantial liberties enjoyed by the people, entirely regardless of what is written in the laws of the state. An examination of the constitutions of the states formed out of the Northwest Territory, and of the history of the time, shows an increase towards the popular control of governmental affairs. Suffrage becomes more general, requirements for holding offices are lessened, a more general rotation in office is provided for, and many other provisions of the same tenor appear. None of the ancient restrictions upon suffrage and office holding, which held so prominent a place in the colonial and early state constitutions appear.

In pursuance of these general tendencies the constitutions of this period show a disposition to take many of the powers from the legislature which it had formerly held. These were not transferred to the executive, where in some instances they belonged, but to the people themselves. The governor, heretofore elected by many of the legislatures, becomes universally elected by the people. Whenever a new office is created the filling of it is given over to popular suffrage.

There continued to be all through this period a dread of executive,

and to some extent of legislative power; and there went along with this fact, and as a consequence of it, a gradual gathering of power into the hands of the people as against both executive and legislature. Since the executive had been almost entirely shorn of power before this time, that which now accrued to the people came largely from the legislative department. So that while but little power, if any, was conferred upon the governor's office, it became possessed of more comparative power and dignity as the legislature became weakened.

The important struggle in the states at this time was not over the question of increased power in any state department as against any other. It was rather a struggle of the state as a whole for rights as against the federal government. The result of this struggle was to minimize the internal affairs of the states; and since their material development was not such as to demand a strong internal organization, all questions of this nature were swallowed up in the, to them, incomparably more important struggle for existence. When by the force of circumstances, they were compelled to keep their hands off federal affairs, and their attention was turned to the development of their internal resources, the states entered upon a new era.

It will be of value to us in our study to trace the growth of executive power in the debates of some of the constitutional conventions of our national history. These fall naturally into two periods, (1) From 1800 to 1860, and (2) from 1860 to 1900.

1800-1860. Among the earliest constitutions is that of Ohio dating from 1802. It has been said that this constitution was a government with no executive and a lop-sided legislature, overloaded with the appointing power which has been taken away from the executive.¹ The governor's office was one of exceedingly small power, it having been asserted that the village constable did more work in his office than the governor in his, and the village justice of the peace performed double the official labor.²

In the Connecticut convention of 1818 a committee recommended giving the pardoning power to the governor. But it was argued that this would be putting too much power into the hands of one man, and the executive was only given power to remit fines and punishments until the following meeting of the legislature and no longer, thus leaving the pardoning power in the hands of the legislature.³

There is some indication in the debates of the New York convention of 1821 of a rising sentiment in favor of giving more power to the governor. But this was not strong enough to control a majority of the votes. The governor's term was reduced from three to two years. He was given a further pardoning power (in murder cases). But throughout the debates there is evidence of a great distrust of "one man power." The actual powers given to the governor were not large. The old Council of Appointment was abolished, and the governor with the consent of the senate, was given a small power of appointment.⁴

¹King: "Ohio," p. 291.

²Ohio Convention Reports, 1802, p. 280.

³Trumbull: Historical Notes of Convention of 1818, pp. 21 and 108.

⁴See: Debates of Convention of 1821, New York.

Wherever there was an accretion of power on the part of the executive during this period it was grudgingly given, and often so hedged about that no further increase might be made. Thus in Tennessee, in giving the executive some small appointing power, it was provided that all offices to be created under the constitution should be filled by the legislature and not by the governor;¹ and the Ohio constitution provided that the legislature should provide for the filling of all such offices.²

Pennsylvania's governor was early given a larger power than the executive of the other states. He has had the distribution of the public patronage from the first. He has always been able to appoint the Secretary of the Commonwealth, and many other important officers, who, in other states, have been elected by the people. This whole question came before the convention of 1837 in a memorial presented there to take from the governor certain appointing power and to substitute popular election. It appears that one of the main reasons for calling the convention was that for thirty years the people had been complaining of the great amount of patronage which was lodged by the state constitution in the hands of the governor. Pennsylvania's constitution of 1790 was made too early to be influenced by the general demand for popular control of all offices, and this demand for a change covering a period of thirty years is a good indication of the tendency of the political thought of the times. It was urged that the constitution of 1790 exalted the "governor of a simple democratic republic above the monarch of Great Britain."³ The demand for a change was held to be so "universal that any argument to prove it would be supremely superfluous."⁴

Pennsylvania's first constitution had provided for a council of twelve, any five of whom with the President and Vice-President had power to act, and could effectually hedge in the governor in all of his actions. In 1790 this was abolished and the power given to the governor alone. No one of the newer western states followed the example set by Pennsylvania. All of the constitutions made between 1800 and 1850 curtailed the governor's power and extended that of the legislature and the people. Only one state which made a constitution during this period gave much power into the hands of the executive. In Michigan the constitution of 1835 provided that the governor should have a large appointing power—a power in excess of that of any governor except in Pennsylvania. In 1850 the people of Michigan in convention took much of this power away and reduced the governor to the position of the chief executive of other states. The plan they then inaugurated did not work well, and in 1862 by an amendment to the constitution of Michigan they provided that the governor should have large discretionary powers of supervision and dismissal over all administrative officers of the state, when the legislature was not in session.⁵ This did not put powers in his hands which were commensurate with those which he had exercised in 1835; but did put him into somewhat closer touch with the administrative machinery of the state.

Public opinion upon this subject had not changed in New York in

¹Poore's Constitutions, II, 1872 and 1682.

²Ibid., II, 1470.

³Debates of Convention of 1837, Pennsylvania, Vol. 2, P. 321.

⁴Ibid.: Vol. II, p. 304.

⁵Poore's Constitutions, I, 1017.

1846. There appeared a strong tendency in the convention of that year to deprive the governor of the veto power.¹ The administrative officers previously chosen by the legislature were after this elected by the people.² It was urged that it would conserve all interests of the state if the governor were in some way to participate in all of the administrative boards of the state.³ Great utility would follow if the governor's influence and skill could be brought to bear on all the administrative departments of the state government. If he were not so connected he would from the logic of the situation be forced to stand by with folded arms like a sentry and let the "constructive nobility" do the work.⁴ The propriety of "making the governor commissioner of the canal fund, trustee of your school fund, and your colleges, and otherwise connecting him with your state finances, the distribution of its gifts and charities, and its donations to colleges and academies," was argued. The argument succeeded in so far as to prevent a construction being placed upon the constitution which would prevent the ex-officio service of the governor as to the university and other boards. But no steps were taken towards connecting him intimately with the administrative business of the state. That has yet to come even in New York state, with any degree of effectiveness.

In Ohio as late as 1850 it was said that the present governor performs his duties *well* and attends to his farm at the same time.⁵ In the convention held in that year arguments of some length were made to prove that the office was one of dignity and power, with a good deal of work connected with it. The office was here as elsewhere at this time wholly subordinated to the other departments of state government. One of Ohio's governors was wont to say in after years that "after passing the first week of his administration with nothing to do, he had taken an inquest of the office and found that relieving criminals and appointing notaries were the sole 'flowers of the prerogative.'"⁶

This statement of the Ohio governor, though made as a witticism, states the matter in a nutshell. The governor of an American Commonwealth, up to the time of the civil war, was an officer with but little power, and no opportunity to carry out a policy in the affairs of the state, or to impress his thought upon her institutions. The national government was the ideal of American citizens. The politician's goal was a national, not a state office. The state governments were practically ignored. What power the state executive had was continually subject to statutory and constitutional restrictions; and the sentiment of the people seemed ever to be towards decreasing rather than increasing that power. In spite of all this there was a marked advance during the period. The governor was everywhere elected by the people. Generally he was given the veto and pardoning power. There was a general shifting of power from the legislature to the people.

1860-1900. During the time from 1860 to 1900 there was but little activity among the states in constitution-making outside of the agitation

¹Debates New York Convention 1846, p. 331.

²Ibid. p. 360.

³Ibid. p. 314.

⁴Ibid. p. 314.

⁵Debates Ohio Convention, 1850, p. 280.

⁶King; Ohio, p. 291.

connected with the reconstruction of the seceding states. Apparently but little thought was given to the character of the executive office. It seemed to be an accepted fact that the status of the governor of an American state was fixed definitely. Nor has there been any important discussion of the question in the last twenty years, though there has been some constitution-making in that time. The debates of these constitutional conventions are almost barren of anything touching the question other than to indicate a tacit acceptance of the status quo, and a perfunctory incorporation of it into the constitution.

The convention of Massachusetts, held in 1853, sounded the keynote both to the prevailing opinion and of a new element which was to enter the arena of state politics. On the one hand it was urged that all or almost all of the then appointed offices of the government should be made elective either by the people or by the legislature. "I trust that by the constitution which shall go out to the people," said Mr. Hallett, "many of the officers who are now appointed by the executive will be made elective either by the people or by the legislature, and in that way a very great portion of the executive patronage will be taken away from the governor."¹ The grounds for this position were the same as those given before, the old fear of class rule being brought prominently forward. If the governor were to be given the appointing power, some other body must review his acts and either confirm or reject his appointees. Not to take this precaution was to destroy the bulwarks upon which popular liberty rested.

The opposite tendency manifested itself in this same debate. In discussing the pardoning power it was said: "While I am in favor of pardons, I would rather that the responsibility of exercising the power should be placed upon one man, to whom the community can look and say 'you did this' and 'you refused to do this' than to have it divided among eleven persons—nine councillors, the governor and the lieutenant-governor—who may let out one criminal, and when asked who let this man loose upon society receive for an answer from the governor that the council did it, and from the council that the governor did it. But if the governor exercises this power alone, there is dignity in the responsibility and he feels it, and decides in the presence of the high sovereignty of the people."² This was sounding a new note in the theory of gubernatorial power. It was received with alarm by those who held to the accepted ideas, they claiming it to be contrary to all precedent, and a view which was "directly hostile to and in violation of, all the views upon which the safety and security of public liberty was supposed by our fathers to be based."³ Such arguments had been made in the courts of Europe and from tory writers in Europe always, but never before were they heard from the lips of American democracy. It was a complete reversal of all the old democratic doctrines, and was neither sound sense, reason, statesmanship nor philosophy. The debate in this convention turned largely upon questions of term, election, council, etc., and the question of duties and powers was only

¹Debates Massachusetts Convention, 1853, p. 442.

²Ibid. Vol. I, p. 455.

³Ibid. p. 456.

touched incidentally. The preponderance of opinion was to retain the accepted view.

In Iowa in 1857 the question was hardly touched in debate, indicating that in the west no new idea had taken root as yet. This is true, too, of California in 1878, and North Dakota in 1889. Nor do the constitutions of the latest formed states show a tendency towards strengthening the executive department.¹

When we turn to the debates in the Pennsylvania constitutional convention of 1873, we again hear the new note sounded. In that state it was complained as it had been in 1837 that too much power was lodged with the executive. In reply to this it was urged in argument that a decrease in power and a distributing of it among several thereby so distributes the responsibility that the best interests will not be subserved. The governor is elected to discharge certain duties, and for these he is responsible. It would be neither the part of wisdom nor reason to create any board or so transfer the power that any of this responsibility would be shifted from his shoulders.² The principal function which the governor is called upon to perform for the people is to stand as a breakwater against improper legislation, and to defend the rights of the people against ill considered, improvident and corrupt laws.³ In the discharge of these public duties the sense of responsibility in any well balanced mind is so great that the public is more apt to be protected than when the responsibility is divided among a great number.⁴ If the power is taken from the executive and given to the people through the exercise of the suffrage there would be "no case of responsibility at all attached to the people, for the share that each one bears in the act is so small that it affects him little or nothing."⁵

With these exceptions the debates of this period show but little tendency to increase the constitutional powers of the governor. He is in much the same position as were his predecessors in years gone by so far as any constitutional provision has been made. He is still commander in chief of the army and navy, and as such has the safety of the people in his keeping. He is possessed of the power as well as charged with the duty of transmitting to the legislature recommendations for action. He has no further power of initiation. He has in most states the veto power which has grown from no power to a power either to veto a bill in whole or in part. He may in most instances pardon and reprieve criminals. He is the legal representative of the dignity and power of the state, and as such is first among its citizens. In these respects there has been a growth during the century. He may appoint certain officers of the administration, and in some states may remove them for cause. In this respect he possesses a power scarcely known to the executive of 1800.

The modern tendency has been to give to the executive a greater independence of the legislature, and greater official discretion than he was possessed of in former times. Still it remains true, that only as it has been accomplished imperceptibly and by the silent force of circumstances

¹Montana, South Dakota, etc.

²Debates Pennsylvania Convention, 1873, Vol. II, p. 353.

³Ibid. Vol. V, p. 203.

⁴Ibid. Vol. II, p. 361.

⁵Ibid. Vol. II, p. 362.

has his power increased. The political progression has been steadily towards the popular control of that department. It is true that but "for the remarkable growth of particular states in wealth and numbers, and a corresponding increase in public concerns and patronage, as incidental to supreme office, the dependence of the governor upon his state constituency would by this time have become strikingly apparent."¹

¹Schouler: Constitutional Studies, p. 281.

III.

Present Day Organization of State Executive Power.

There are three classes of executive officers in the states:

- (1) The Chief Executive.
- (2) Elected Executive Officers.
- (3) Lesser Executive Officers—appointed.

The chief executive in all of the states is the governor. In many there is a lieutenant-governor, and in three there is an elected council of from five to eight members.

There is a secretary of state and a treasurer in all of the states; eleven states have a comptroller though in many the auditor performs the same duties; one has a commissary general; most have an attorney general; Pennsylvania a secretary of internal affairs; New York a superintendent of public works and a superintendent of states prisons. There is a superintendent of public instruction in a great many states, though in eleven states there are boards of education. There is a state engineer and surveyor in New York, California and Nevada; a state librarian in several states. Pennsylvania has a secretary of agriculture, and most of the states have a department of agriculture. These officers may be placed in class two. Below these there are a number of lesser officers generally appointed by the governor. These are in the majority of cases appointed as boards or commissions to take care of such executive and administrative duties as are connected with railroads, agriculture, commerce, the public health, charities, and penal and reformatory institutions. These make up class three.

The governor in all of the states is elected for a term varying from one to four years. In the older states of Massachusetts and Rhode Island he is elected for one year, while in some of the newer states he holds office for four years. About one-half of the states elect him for two years. His duty is generally stated to be to "take care that the laws are faithfully executed;" to give to the legislature information as to the condition of the state, and recommend such legislation as he deems expedient; and in seven states to present estimates of probable expenditures for the year. He has power to require information in writing from the officers of the executive department upon subjects relating to their offices; he may adjourn the houses of the legislature in case of disagreement with certain restrictions as to time of adjournment; he is commander in chief of the army and navy of all the states, though in some he is not allowed

The authorities for this section are Stimson's American Statute Law, Vol. II; the "Manuals," "Blue Books" and "Registers" compiled by the secretaries of the various states (New York publishes perhaps the most complete manual, Pennsylvania and some of the newer western states following; Wisconsin and Minnesota both publish excellent manuals); the statutes and codes of the different states; the annual reports of the various officers, boards, etc., referred to; the messages of the governors.

to command in the field. He has in all but four states the veto power, extending in some instances to vetoing items in the bills and approving the remainder. In a few states he may require information from the heads of the state institutions, though the power is limited. By the constitutions of most of the states the governor has power to grant pardons and commutations of sentence after conviction, though in a number he must have the consent of a board of pardons. In all states he has some appointing power.

Of the other executive officers of the state the majority are elected at the same time and by the same electorate as the governor. Their terms are often coincident with his but not always. In six states the secretary of state is appointed by the governor with consent of the senate.¹ In Florida all but the lieutenant-governor are so appointed. The legislature frequently elects certain of these officers, as the secretary,² treasurer,³ auditor,⁴ comptroller,⁵ attorney-general;⁶ in Tennessee the attorney-general is appointed by the supreme court. The superintendent of public instruction is appointed by the governor in Pennsylvania and elected on joint ballot of both houses in New York. In general he is elected by the people.

These officers are generally considered to make up the executive department of the state. They are the original officers of the state government, and occupy in the main their original positions in the structure. In the course of years the bulk of their work has increased with enlarging interests, but the scope of the work is as it has always been. There has been no change in their official relations to one another or to the chief executive. The chief executive has no power to call these officers together to consult with them; and they do not as a rule consider themselves as subordinate to him. Elected as they are by the same electorate and to perform certain functions, they consider their duty to end here. The governor has no authority constitutional, statutory or otherwise to control their actions or guide their policy. Each one of them, to quote a careful writer, is obedient to his own statute.⁷

The weakness of the governor's position is further seen in the fact that part of these officers may not be of his party, and therefore may be out of sympathy with any plan which he is furthering. They may not only not aid him in his work but may be a positive check upon him.

In these departments there is an utter lack of coördination. They represent the maximum of decentralization in government. Each one is an independent department, and the governor is at best no more than the first among equals. This results in a state of affairs where the governor becomes together with these officers, obedient to his statute, and the executive and administrative business of the state is carried on with a lack of system which would not be tolerated in any private enterprise.

What has become of executive power? While the legislatures appro-

¹New Jersey, Pennsylvania, Delaware, West Virginia, Kentucky, Texas

²New Hampshire, Maine, Virginia, Tennessee.

³Delaware, Maryland, New Hampshire, Virginia, Maine, Tennessee.

⁴Virginia.

⁵Tennessee.

⁶Maine.

⁷Dr. Woodrow Wilson.

appropriated much of it in the beginning of state history, they have been compelled to give most of it up in the process of leveling which has been going on in the states. It has not been transferred to the judiciary. The people have received some of this power, it is true, and especially as concerns the election of officers. But the administering of public business which is the most important part of the work of the executive department in the state has not been transferred to them, though it has been taken from the legislature. Where, then, is it to be found?

In the more populous states especially there has been a remarkable growth since the civil war of boards and commissions for the carrying on of public business. Their members are in most cases appointed by the governor, subject to the usual restrictions upon such appointments. They serve for varying terms from three to ten years. Their duties are as various as the interests which affect a thickly settled, highly cultured people. Their tenure of office is in most cases fixed by law; in some it is at the pleasure of the appointing power. The lack of coordination and responsibility which exists in the other executive departments becomes highly accentuated in this one. The members of the boards, once they are appointed, pass from the reach of executive control. Yet their duties properly belong to that department. They meet only at intervals, in many cases one or two days in the year, in others four or five times in the year for a few days at a time. In the interval their members are scattered over the state and are engrossed in other business. These boards have not arisen under any carefully wrought out plan of administration, but have been created from time to time as new questions arose. In some cases they have been demanded for political reasons; but for the most part they have been the result of more or less clearly discernible economic and social causes.

These economic and social causes may be grouped under the following heads:

- 1.—The growth and development of railroads and means of communication, and consequent state control.
- 2.—Growth of manufactures, developing into the modern factory system.
- 3.—The opening up of mines.
- 4.—The increase of population and the growth of cities.
- 5.—The decrease in forests, fish and game.
- 6.—The need for improved methods of agriculture, better roads, and protection to agricultural interests.
- 7.—The growth of altruistic thought regarding the control of penal, reformatory and charitable institutions.
- 8.—The growth of banking and insurance.
- 9.—The advance of socialistic thought.

When the numerous questions growing out of this multifarious life arose, the state attempted to answer them. There were generally speaking two classes of these questions—first, who shall control them, and second, how they shall be controlled.

The first question was answered without much difficulty and finally. There can be no questioning of the wisdom of state control. Professor

Bryce has called attention to the fact that the real function of the states is administrative rather than legislative. It is true, as he justly observes, that the people have slighted this important function in all their theories of states rights and duties. This may be because on account of reckless extravagance, the first attempts of the states in this direction were failures. But it is also true that the constitutional theory which was worked out during the first fifty years of state existence tended continually to subordinate the states to the nation. That the states have this function to perform is evident when we consider that ten of the great subjects of legislation in England during the century just closed, which gave to that period the name of "Epoch of Reform," would if passed in this country, have been enacted by state legislatures.

In answering the second question the states found themselves in the field of experiment. The suggestion to create state departments seems not to have been made, principally because the various interests presented themselves for consideration at different times and no one of them was thought of enough importance to demand it. The general answer has been, "appoint a board or a commission from the body of the citizens and charge them with the duty of carrying on the most difficult part of the government of the state." This tendency, which may be said to be the peculiar characteristic of present day state government, has grown up within the last forty years. The following table designed to show the organization of the executive department in 1860 in four states will show this to be true:

OFFICE.	<i>Pennsylvania.</i>	<i>New York.</i>	<i>Mas'chusetts.</i>	<i>Iowa.</i>
Governor.....	El. 3 yrs.	El.	El. 1 yr.	El. 2 yrs.
Secretary State.....	Appt.	El. 2 yrs.	El. 1 yr.	El. 1 yr.
Treasurer.....	El. 3 yrs.	El. 2 yrs.	El. 1 yr.	El. 2 yrs.
Auditor.....	El. 3 yrs.	El. 2 yrs.	El. 1 yr.	El. 2 yrs.
Attorney General.....	Ap.	El. 2 yrs.	El. 1 yr.	El. 2 yrs.
Secretary Internal Affairs.....	El. 3 yrs.			
Supt. Public Instruction.....	Ap.	Elec. Legis.	Bd. 8 ap.	
Adjutant General.....	Ap. by Gov.	Same.	Same.	Same.
State Engineer.....		El. 2 yrs.		
Bank Commissioner.....		Supt. ap. by Gov.	3 Com. ap. by Gov. & C.	
Insurance Commissioner.....		Supt. ap. by Gov.	2 Com. ap. by Gov. & C.	
State's Prisons.....		Com. el.		
Butter, Lard & Fish Com.....			1 Com. ap. by Gov. & C.	

It will be observed that there are but four commissions in these four states. New York had a states prison commission which was elected. Massachusetts had a board of education, a banking and an insurance commission, all of whom were appointed by the governor and the council. Iowa and Pennsylvania had no commissions. At the present time New York has nearly a hundred such boards and commissions, while Massachusetts, Pennsylvania and the other more populous and wealthy states have a large number. The table which follows will show at a glance the growth since 1860. This table does not aim to be complete. There are a number of commissions in the states which cannot be classified and these are not referred to. But the more important of them are included, and the variations in organization, manner of appointment and term are noted.

OFFICE.	NEW YORK.	PENNSYLVANIA.	MASSACHUSETTS.	IOWA.
Governor and Lieutenant Governor.	Popular Election. 2 yrs.	Popular Election. 3 yrs.	Popular Election. 1 yr.	Popular Election. 2 yrs.
Secretary State.	Popular Election. 2 yrs.	App't by Gov. 3 yrs.	Popular Election. 1 yr.	Popular Election. 2 yrs.
Treasurer.	Popular Election. 1 yr.	Popular Election. 2 yrs.	Popular Election. 1 yr.	Popular Election. 2 yrs.
Auditor.	Under Comptroller. Popular Election. 2 yrs.	Popular Election. 3 yrs.	Popular Election. 1 yr.	Popular Election. 2 yrs.
Attorney General.	Popular Election. 2 yrs.	App't by Gov. At pleasure.	Popular Election. 1 yr.	Popular Election. 2 yrs.
Adjutant General.	App't by Gov. 2 yrs.	App't by Gov. At pleasure.	App't by Gov.	Popular Election. 2 yrs.
Superintendent Public Instruction.	Elected. Joint Ballot Senate and House. 3 years. Regents of University Elected for Life.	App't by Gov. 4 yrs.	Bd. 8. App't by Gov. and Council. Gov. and Lt-Gov. ex-officio members. Sec'y, \$4,500.	Popular Election. 2 yrs.
Secretary Internal Affairs.		Popular Election. 4 yrs.		
Insurance Commissioner.	1. App't by Gov. 3 yrs.	1. App't by Gov. 3 yrs.	1. App't by Gov. 3 yrs.	Under Auditor.
Banking Commissioner.	1. App't by Gov. 3 yrs.	1. App't by Gov. 4 yrs.		Under Audit r.
Agriculture.	1. App't by Gov. 3 yrs.	1. App't by Gov. 4 yrs. Forestry 2 App't by Gov. under Food 1 Veterinarian 1 Sec'y Agr. 4 yrs.	Bd. 6 ex-officio. 3 app't by Gov. 34 elected by Agr. Societies.	Bd. 4 ex-officio. 11 Elected by Agr. Societies.
Railroad Commissioners.	Bd. 3. App't by Gov. 5 yrs.	A Bureau under Sec'y of Internal Affairs.	Bd. 3. App't by Gov. 3 yrs.	Bd. 3. Popular Election. 3 yrs.
Superintendent Public Works.	1. App't by Gov.			
Fisheries and Game.	Bd. 5. App't by Gov. 5 yrs. * Forest Preserve Board of 3.	Bd. 6. App't by Gov. 3 yrs.	Bd. 3. App't by Gov. 5 yrs.	1. App't by Gov. 3 yrs.
Forestry.	App't from these.	Bd. 2. App't by Gov. 4 yrs.		
Health.	Bd. 3. App't by Gov. Unpaid. 3 yrs.	Bd. 6. App't by Gov. 6 yrs.	Bd. 7. App't by Gov. Sec'y and ex-officio members.	Bd. 7. App't by Gov. 7 yrs. Sec'y and ex-officio members.
Prisons.	Bd. 8. App't by Gov. 8 yrs.		Bd. 5. App't by Gov.	Bd. of Control 3. App't by Gov.
State's Prisons.	Sup't App't by Gov. 5 yrs.		1. App't by Gov.	Bd. of Control.
Labor Statistics.	1. App't by Gov. 3 yrs. \$3000.	Under Sec'y Internal Affairs.	1. App't by Gov.	App't by Gov. 3 yrs.
Factory Inspectors.	1. App't by Gov. 3 yrs.	1. App't by Gov. 3 yrs.		
Charities.	Bd. 12. App't by Gov. 3 yrs.	Bd. 10. App't by Gov. 3 yrs.	Bd. 10. App't by Gov.	Bd. of Control.
Mediation and Arbitration.	Bd. 3. App't by Gov. 3 yrs. †		Bd. 3. App't by Gov.	
Mine Inspectors.		Bd. 8. App't by Gov. 5 yrs.		Bd. 3. App't by Gov. 3 yrs.
Civic Service.	Bd. 3. App't by Gov.			
Excise.	1. App't by Gov. 5 yrs.			
Librarian.	"University of New York."	1. App't by Gov. 4 yrs.	Sec'y Bd. Education.	1. App't by Library Board.
Lunacy.	Bd. App't by Gov.	Com. from Bd. Charities.	Bd. 5. App't by Gov.	Bd. of Control.
State Institutions.	Bds. of Trustees. App't by Gov. Various numbers.	Bds. of Trustees. App't by Gov. Various numbers.	Bds. of Trustees. App't by Gov. Various numbers.	Bd. of Control.

* The Forest, Fish and Game Commission and the Forest Preserve Board were consolidated and put under a Single Commissioner in 1901.

† See 1911 Census of State.

[illegible]

IV.

The Growth of Commission Government.

1.—The growth of means of communication.

The feature of railroad development which led to state control was the pooling and combinations which beginning about 1870 brought the interests of the railroads and those of the people in many cases into direct conflict. It was realized that "he who controls the means of communication has it in his power to arbitrarily make or destroy the business of any place or any person; and it was because the public recognized this great power, that appeal was made to the government for protection."¹

This appeal was responded to by the appointment in thirty-seven states of boards of railroad commissioners, bureaus, or some means whereby the questions arising out of improved means of communication and transportation might be dealt with.²

The organization of these boards varies. In Pennsylvania there is a bureau appointed under the supervision of the department of internal affairs; in New York a board of three members appointed by the governor for five years; in Iowa a board of three members elected at the general election; while California has three railroad districts each of which is entitled to elect one commissioner for four years.

The duties and powers of these boards of railroad commissioners vary as much as their organization. In Massachusetts and Pennsylvania they are merely statistical and recommendatory. Iowa's commissioners have the entire control and regulation of all railway corporations in the state. They may use the courts to enforce their decrees and at all times maintain a close supervision over the manner in which the railroads are maintained and operated, with reference to the security and accommodation of the public. In New York they have the special duty of gradually abolishing the grade crossings. These officers are salaried in nearly all of the states. In New York the corporations under their control pay the expense of the commission. The report which they make annually to the governor and legislature is the only connection which they have with any established department of state government. Their growth has been very rapid, there having been but twenty-five in 1890 and thirty-seven in 1900. As to other means of communication the state has as yet done nothing, although the question of state control of the good roads movement has been agitated and at least two states have appointed a good roads commissioner.³

2.—Growth of manufactures and factory system.

¹H. C. Adams, Intro. Dixon's State R. R. Control.

²Ala., Ark., Cal., Col., Conn., Fla., Ga., Ida., Ill., Ind., Ia., Kan., Ky., La., Me., Mass., Mich., Minn., Miss., Mo., Neb., N. H., N. Y., N. C., N. D., O., Ore., Pa., R. I., S. C., S. D., Tenn., Tex., Vt., Va., Wis., Wyo.

³New Jersey, California.

3.—The opening up of mines.

9.—The advance of altruistic thought.

These three causes may be grouped together under the head of problems of industry. In 1800 the old system of hand labor prevailed in the United States. With the invention of the cotton gin in 1790 a growth began which has steadily continued and manufactures in the United States have grown from a total output in 1810 of \$198,613,474 to an output in 1890 of \$9,372,437,283. This result could not have been obtained under the old system, but required for its realization the modern factory system with all its attendant evils. Men and women came from the most healthful conditions in small mills and private factories into one large factory where if some superior power did not step in and relieve them they would be subject to an infinite amount of suffering and misery.

The growth in manufactures has led in an indirect way to the opening up of mines all over the country. From its hazardous nature and the frequent employment of women and children in dangerous situations it has been necessary to bring it under state supervision.

The questions which have arisen out of the change from hand labor to the factory system have touched upon hours of labor, wages, employment of women and children, a safe place to work, and sanitary conditions. Factory inspectors have been appointed in the principal manufacturing states whose duties are, as stated in Pennsylvania, where the inspector is appointed by the governor, to be to enforce all factory legislation and such acts as provide for the "health and safety of women and children in mercantile industries and manufacturing, printing, baking, laundry and renovating establishments." It is his duty to care for sanitary arrangements, fire escapes, and to prevent clothing being manufactured in places where it may become contaminated with contagious diseases; thus the sweat shop evil is under his supervision. New York appoints a factory inspector, an assistant and fifty deputies whose duties are practically the same as above mentioned.

Mine inspectors are appointed in Pennsylvania under the department of internal affairs; in Iowa they are appointed as independent officers; in California these interests are under a bureau of inspectors who are appointed by the governor for five years. Their duties are largely to care for the safety and healthfulness of the mines within the states.

A factor which must be reckoned with in this connection is the steady growth of socialistic sentiment resulting in labor unions, and strained relations between employer and employee. The attitude of many of these unions has given rise to a number of questions with which the state can better deal than any other power. The rapid growth of trades unions and other associations of labor against capital, the changing thought of the people generally upon the rights of the laborer, the active measures which have been taken to better it—these are some of the results of this growth in sentiment. It has led the states actively to prosecute statistical investigations, to urge the use of arbitration in settling labor disputes, and in three cases to appoint boards of mediation and arbitration.

Bureaus of labor statistics have been appointed in thirty-one of the

states,¹ whose duty it is to collect statistics of wages, hours of labor, child and women employment, cost of living, investigate the causes of strikes and industrial depressions, encourage coöperation and saving, and make special inquiries in "relation to the commercial, industrial, social and sanitary condition of workingmen, and the productive industries of the state."

Further attempts have been made to regulate the questions arising out of the manufacturing and laboring interests in New York, Massachusetts and Illinois through boards of arbitration and mediation. These have three members who are appointed by the governor, in New York for three years. They are salaried and their duties are stated in the New York law to be "wherever a strike or lockout occurs or is seriously threatened, in any part of the state, it is the duty of the board to proceed as soon as practicable to the locality of such strikes or lockouts, and put themselves in communication with the parties to the controversy and endeavor by mediation to effect an amicable settlement thereof. It is also the duty of the board to hear and consider appeals from decisions of local boards, and to investigate such cases, and the decision of the state board thereon is final and conclusive in the premises upon both parties to the arbitration. The board has power to compel the production of books, papers and documents in the same manner as courts of record or the judges thereof in this state."² Much has been effected by these boards.

In all of the instances cited above the boards and officers are required to report annually to the governor. He is not, however, permitted after appointing them to control their actions.

4.—The increase of population and the growth of cities.

Such great strides as are necessary to increase a population from three millions to nearly eighty millions in one century must produce problems peculiarly its own. Few questions of administration come up for solution in a thinly settled region; but with the changed conditions incident to closer communication many questions have arisen. In the United States today nearly one-third of the population is living in closely crowded cities; in 1790 one-thirty-third. We had no city then whose population was thirty thousand; now we have three with more than a million and a number of over one hundred thousand.

This rapid growth and congestion in cities has produced many unhealthy conditions, and State Boards of Health have arisen to meet them. Prior to 1869 there were no such boards in the United States; in 1890 there were thirty, and several have been organized since.

They are uniformly appointed by the governor and are often unpaid. New York has a board of three members who serve for three years; Pennsylvania's board has six members; while Iowa, Massachusetts and California appoint seven members to serve seven years. In most cases there are certain ex officio members from the state officers who are members of the board.

¹Mass., Pa., Conn., Ky., Ohio, N. J., Mo., Ill., Ind., N. Y., Cal., Mich., Wis., Ia., Md., Kan., R. I., Neb., N. C., Me., Minn., Col., W. Va., N. D., Tenn., Mont., N. H., Wash., Va., Ida., La. It is interesting to note that none of these bureaus date back of 1869, when the Massachusetts bureau was organized, and that twenty-two of them were organized within the last twenty years.

²New York Manual, p. 403.

These boards are to have general power in all matters affecting health and life, to make a special study of vital statistics; to make "sanitary investigations and inquiries respecting the cause of diseases and especially epidemic diseases, including those of domestic animals, the sources of mortality and the effects of localities, employments, conditions, habits, foods, beverages and medicines on the health of the people." The board meets but three times yearly in Pennsylvania; and four times in New York. But there is in most cases a paid secretary who gives his time to the work of the board.

In nearly all of the states the state board of health has a general supervision over the medical and allied professions. Under its supervision there are usually three boards of medical examiners, one representing each of the schools of medicine, whose duty it is to examine candidates for the practice of medicine in the state. There are also boards of from three to seven members of dental examiners; boards of pharmacy; boards of veterinary examiners; in Pennsylvania a board of undertakers' examiners. Pennsylvania has a medical council of eight ex officio members who issue certificates for the practice of medicine to successful candidates.

5.—The decrease of forests, fish and game.

Of recent years there has grown up a widespread interest in the future of our forests and the supply of fish and game. A market has been created for forty million feet of lumber yearly, seventy-five per cent of which must be coniferous wood. The "appalling and disgraceful" devastation of our forests to supply this demand has become a serious question. The decrease in game and fish, while it is not so serious a matter, yet may be a cause for concern. In eighteen of the states there are found commissions appointed by the governor, which have the forest preservation and fish culture and preservation under their care. In New York there was until 1900 a fish, game and forest commission appointed by the governor and from them another board was appointed known as the Forest Preserve Board with the special duty of preserving the forests and the purchase of forest lands. The powers of both these boards were given to a single officer in 1900.

6.—The need for improved methods in agriculture.

The various interests connected with the growth of agriculture have given rise in many of our states to departments or boards of agriculture. Pennsylvania has a secretary of agriculture, a board of agriculture and a state live stock sanitation commission; in New York there is a commissioner of agriculture appointed by the governor for three years. Massachusetts has a board of six ex officio members, three members appointed by the governor and thirty-four members elected by the various agricultural societies of the state; Iowa has a board constituted in like manner.

The department of agriculture in Pennsylvania is one of the recognized executive departments in the state government, and is under the control of a secretary appointed by the governor. There are under him a deputy, an economic geologist, a commission of forestry, a dairy and food commissioner and veterinarian who with the secretary are appointed by the governor for four years. The duties of the secretary are stated to be "to enlarge and promote the development of agriculture, horticulture, forestry and kindred industries, and to collect and publish statistics relat-

ing to agricultural industries, to investigate the adaptability of grains, fruits, grasses and other crops to the soil and climate of the state; to investigate into the diseases of plants and the crops of the state generally, to examine into the valuation and taxation of farm lands; and to conduct and carry on examinations in all topics relating to the general agriculture of the state." The state board of agriculture in Pennsylvania consists of certain ex officio officers, and is to meet at least once in each year. It does not seem to have any duties which could not be better cared for by the secretary of agriculture.

The organization in the other states is of a much looser character than in Pennsylvania. The department of agriculture in Iowa, which may serve as an example, is composed of certain ex officio members and one director from each congressional district elected at a convention held yearly in December, composed of the county agricultural societies. The powers of the board are to recommend legislation and supervise the general agricultural interests of the state.

The dairy interests of the state since the introduction of imitation butter products in 1870 have been gradually put under the care of bureaus and commissions. In 1900 there were twenty of these.¹ In twenty-eight states pure food laws have been passed and their enforcement has been put in the care of these commissioners and of boards of health.²

7.—The change of sentiment as to the control and management of charitable, reformatory and penal institutions.

Early in the nineteenth century the unfortunate and criminal classes of society were not dealt with in any organized way. The prisons and reform schools which existed were badly managed and worked great evils, while the poor and unfortunate were relegated to private charity or suffered neglect. The whole basis of the treatment of these classes in society was changed with the rise of altruistic sentiment in late years. One of the most hopeful signs of progress is the growth of a sentiment that the community owes a duty to its defective classes which should be discharged in an orderly and businesslike manner; and which recognizes the fact that even though a man be a criminal, he cannot therefore be neglected, and society be exonerated. The trend of the years has been for the state to undertake this work and put it upon a scientific basis. The principle underlying this is well stated by Professor Warner, "whenver a community has been educated up to such a point that it insists upon a large amount of relief work being done, and when the methods of doing it have been reduced to a routine, then the state has been asked to undertake the work, and relieve private benevolence of the burden. Relief work is adapted to administration by the state in proportion as it can be reduced to routine, and in proportion as it requires very large expenditures to which all taxpayers can properly be asked to contribute."³

In the administration of public institutions, including states prisons, reform schools, schools for the deaf and dumb, the blind, and institutions

¹Cal., Ill., Mass., Mo., Col., Conn., Ind., Ia., Mich., Minn., Neb., N. J., N. Y., N. D., Ohio, Ore., Pa., Utah, Wash., Wis.

²Conn., Fla., Ida., Ill., Ind., Kan., Ky., La., Md., Mich., Minn., Neb., N. J., N. M., N. Y., N. C., Ohio, Okla., Ore., Pa., S. D., Tenn., Vt., Va., Wash., W. Va., Wis., Wyo. See Bulletin 26, U. S. Dept. Agri., pp. 6 and 7.

³American Charities, p. 305.

for the care of the insane, two types of administrative organization are seen.

In most states the governor appoints a board of trustees of from five to nine members for each institution. In Pennsylvania there are twenty such institutions, and the rule is for a board of nine trustees to be appointed for each one. This is also true in New York and Massachusetts. There are in each of these states certain other boards which have more or less supervisory jurisdiction over this class of institutions. Pennsylvania has a board of charities of ten members appointed by the governor for a term of five years, with "full power to investigate the conduct of the trustees or officers" of such institutions, the buildings and grounds; and all other matters pertaining to their usefulness and good management. A special committee on lunacy from this board performs like service for hospitals for the insane. In New York there are in addition to the trustees of the several institutions, four of these supervisory boards. There is a state commission in lunacy of three members, appointed by the governor for six years; a board of charities of twelve members, appointed for eight years; a state superintendent of prisons appointed for five years, and a state commission of prisons of eight members appointed for eight years. The commission in lunacy has power to inquire into methods of management and government of eleven state institutions for the care of the insane, each of which has an additional board of eight trustees. The board of charities visits and maintains a general supervision over all institutions which are of a charitable, eleemosynary, correctional or reformatory character. This all inclusive jurisdiction is not so inclusive as it seems from the above statement; for the supervision of the prisons is under the prison commission and the superintendent of prisons.

This type of management is almost universal, and in the states where it exists there is no coördination of the powers of the different boards and commissions. The governor, being the appointing power for them all, ought to stand as a connecting link, but such is not the case.

The other type of administration places the control and management of all such institutions under the jurisdiction of a central board of control, which exercises a close supervision over them without the mediary of a board of trustees. This is true in seven of the states, viz., Kansas, Rhode Island, Arkansas, South Dakota, Wyoming, Iowa and Wisconsin.¹

Boards of control are experiments in state administration which will be watched with interest. Iowa's board, organized under an act of the Twenty-seventh General Assembly in 1898, will serve for an example of this type of organization. It consists of three members, appointed by the governor, to assume the duties which had heretofore devolved upon the boards of trustees of the public institutions of the state² and to have a general supervision over its educational institutions. The board visits and inspects these institutions at least once in six months and investigates their financial condition and management. The hospitals for the

¹Annals of American Academy, January, 1901.

²The Soldiers' Home, the State Hospitals for the Insane, College for the Blind, the School for the Deaf, the Institution for the Feeble-Minded, the Soldiers' Orphans' Home, the Industrial Home for the Blind, the Industrial Schools, the State Penitentiaries.

insane are visited once in each month and a quarterly conference of the superintendents, wardens and other executive officers of the institutions is held for discussing and recommending economical methods of management. An inspection is made of every part of the institution visited, including the buildings and grounds, the general and special dietary, the stores and methods of supply. The board appoints all superintendents, wardens and other chief executive officers for terms of four years. A quarterly bulletin is published giving information regarding the best and most successful methods of caring for the insane, defective and criminal classes. A biennial statistical report is also published, which may contain recommendations for legislation concerning subjects connected with the institutions.

The control of the educational institutions is not immediate. Section 51 of the act provides that in addition to the direct and specific powers of the board, it shall investigate thoroughly the reports and doings of the regents of the state university and the trustees of the normal and agricultural schools of the state, for the purpose of ascertaining whether these institutions have been conducted in an efficient and businesslike manner. The board has issued its first biennial report and has regularly published the bulletins above referred to.¹

8.—The growth of banking and insurance.

From ten savings banks in 1820 the number has grown to 987 in 1899 with 4,191 state banks, 750 private banks and 260 loan and trust companies. The business of life insurance has also grown in popular favor. To meet these conditions many states have appointed banking and insurance commissioners. The general rule is to appoint one commissioner, but in some cases there are boards with general supervisory powers.

Educational interests have been put under the care of a superintendent of public instruction either elected by the people at the general election or appointed by the governor. In other states there is a board of education, in some cases appointed and in others elected. Pennsylvania's superintendent is appointed by the governor; New York's is elected on joint ballot of the legislature. In Massachusetts there is a board of eight appointed by the governor. California has a board of education composed entirely of *ex officio* officers.

Besides the boards and commissions which have been enumerated, there are a number of commissions in the states which cannot be classed under any of these heads. In New York there is a department of excise, a civil service commission, a commission on statutory revision, the state tax commission, the state racing commission, a board of embalming examiners. Pennsylvania has a board of pardon, as have several other states, boards of property and revenue commissioners. California furnishes us a long list of harbor commissioners, a debris commissioner, a number of pilot commissioners and a board of port wardens. There are also a number of state geological and botanical boards of commissions for scientific investigations. The list might be continued almost indefinitely, each state having organized such boards and commissions as it was thought would meet its especial needs. Enough has been said to indicate the remarkable prevalence of this form of administrative organization.

¹Acts of 27th G. A., Iowa, first Biennial Report Board of Control.

To sum up the organization of the executive department:

1. There exists in all of the states a chief executive who is elected by the people and serves for from one to four years. In the course of our history he has grown from an officer elected by the legislatures and completely subservient to them, with comparatively speaking no power, to an officer freed from legislative trammels, but still not occupying the position which the chief executive of a state ought to occupy. While he is chief executive he has but little executive power. There are also many elected officers who with him make up the executive department. They are not subordinate to him, and he has no controlling power over their actions. For this reason he cannot carry out any policy. These officers have responded to a popular demand for numerous elected officers and short terms of service. The result is a great lack of unity and co-ordination in the state executive department.

2. Numerous boards and commissions carry out to a large extent the administrative business of the state. They are created generally by appointment from the governor, with consent of the senate, but in a few cases by election either in the legislature or by the people. They report to the governor and legislature annually.

Some of these boards are created for the purpose of investigating, procuring information, giving information and recommending action to the legislature. Certain other boards, as boards of railroad commissioners generally, and often boards of health, have power to enforce the laws pertaining to their departments, through the courts. So far as they are given duties which require oversight, as factory inspectors, boards of trustees and managers of public institutions, they have full power to inspect the buildings, books, manner of operation and results, in the institutions under their care. In a number of them the governor, and other state officers are *ex officio* members, while the actual business of the board is carried on by the secretary, who is paid and who is the board for all practical purposes, his advice being generally taken, and his plans accepted by the board without investigation.

The governor's position in the executive department as regards these boards is to appoint the members and in cases where the statute provides for it to dismiss them for gross neglect of duty. He has no power *in* any of them.

3. Executive power has thus passed from the executive, first to the legislature in the early constitutions; then back again in part to the executive, in the later constitutions; but only in part. In a large measure it has passed from both the executive and legislature into the various boards and commissions which have been established, until today decentralization of executive and administrative power has reached its height in our state government.

The reaction will undoubtedly come. Its first signs are already seen in the boards of control established in many of our states. It has been realized in a great measure in federal and municipal government. The state government being in a sense further removed from the immediate real or fancied interest of the people, has been the last to feel its influence. But once started it will be brought about in the states as in the city and national government by the same economic and social causes.

V.

The Executive and its Relation to Commission Government.

Any system of dealing with public interests in order to justify itself before the bar of the present-day public opinion, must meet at least three requirements, i.e., those of efficiency, economy and accountability. Systems which cannot meet these may live. But it is either because the people are not aware of their failure, or know of no better way to deal with the matters with which they are entrusted. The people of the states are to a great degree dependent upon the state government for safety and happiness, for liberty, property and general welfare. It touches them at each of these vital points; and it is to their immediate interest that the form of government which the state provides should be of the highest efficiency, and at the same time should be economical and responsible. The more complex these duties become, the greater becomes the necessity that the power which administers them should be restrained by such official responsibility as will keep it always within the control of the people. "The first requisite of efficient administration is power, with responsibility which can readily call it to account."

Present-day methods of administration through a commission are neither economical, efficient nor responsible. On the contrary, from the evidence before us they seem to be most extravagant methods, lacking greatly in efficiency and being responsible to no one. Their creation, too, has taken a part of the executive power from where it logically belongs and transferred it to them in a manner which greatly weakens executive power and authority, while it does not inure to the benefit of the people.

These commissions are not as efficient as a single executive officer, for several reasons. In the organization of many of them there are a number of ex-officio members. These cannot be counted upon for active work, and are a source of weakness rather than of strength. If in addition to this the members live at a distance from each other, and meet only occasionally, they cannot have that grasp of affairs which is necessary to efficient administration. Such a commission is also subject to all the weakness of a deliberative body. In many cases the members are unpaid, and this causes a lack of interest unless they are stimulated by patriotism or some personal interest which may be wanting. The charge is also made that they have on them men who have been appointed for political reasons, the commission being considered a place "of comfortable retirement for once active politicians whose occupation is gone, and whose usefulness to the commonwealth is measured only by their admitted uselessness to political parties or to business circles."¹ It is not here claimed that all these sources of weakness are present in all commissions; but if any of them are, they

¹Governor Greenhalge, Mass., 1894.

are in so far rendered incapable of giving that efficient service which the public business ought to receive.

"A board," says Governor D. B. Hill, "consisting of eleven persons (aside from its *ex officio* members) scattered in various parts of the state, and which only occasionally meets, is a cumbersome and unwieldy body. It cannot perform its duties as efficiently or satisfactorily as a single responsible head. Its functions cannot be discharged as economically or expeditiously as when in the hands of one controlling executive officer."¹ Governor Hill recommended the abolition of the state board of charities and the commission in lunacy, and the creation of a single commissioner, who should be vested with the powers of both boards. He also recommended the abolition of the state board of health of ten members, and the substitution of one competent to assume the sole general charge of the preservation of the public health. This officer should be as "potential and responsible" in his department as are the other single department heads in theirs.

Another fact should be mentioned in this connection. The members of these boards in many instances have other business to which they must give the greater part of their attention, public service being to them only incidental. From the nature of the case efficient service cannot be expected from such members, if as is true in many instances, the affairs to be dealt with are of a complex nature. Even such commissioners as those on the board of fish, game and forestry in New York, in the opinion of Governor Roosevelt, should be woodsmen, and have no other business.²

The great multiplication of boards and commissions has tended to increase public expenditures very rapidly. This tendency was noted in 1892 by Governor Flower, of New York, in his annual message. The following table of expenses incurred by some of the boards in that state will indicate this with sufficient emphasis:

NAME OF BOARD.	When established.	Cost first year.	In 1891.
Board of Health.....	1880	\$11,700	\$28,832
Bureau of Labor.....	1883	7,090	35,506
Dairy Commission.....	1884	41,503	91,842
Forest Commission.....	1884	2,954	58,478
Arbitration	1886	14,552	15,093
Lunacy Commission.....	1889	16,146	20,895

A great many commissions have been established since this message was written; but the warning which it contains is even more applicable to present conditions than it was to those of the time when it was written. The Governor said: "Undoubtedly a large part of this legislation was wise and the commissions or bureaus created have accomplished many beneficial results; but some of them, I fear, have failed to justify the expenditure on their behalf, and the tendency in nearly all of them has been toward constantly increasing expenditures."³

This indication of the tendency to expense has not been overlooked by the later governors of the Empire State. Of somewhat sterner nature is the following from the message of Governor Morton in 1895: "A great extravagance arises from the multiplicity of commissions which have increased so rapidly in number and expense since about the year 1880.

¹Public Papers of D. B. Hill, 1886, p. 38.

²Message 1900.

³Public papers of R. G. Flower, New York, 1892, p. 20.

From an expenditure for the duties covered by these commissions of less than \$4,000 in 1880, we have seen the growth from year to year until the cost of these commissions alone amounted to nearly a million and a quarter of dollars last year."

The fullest treatment which the question of expense in commissions has received at the hands of a public servant is contained in the utterances of Governor Odell in January, 1901. Governor Odell calls the attention of the legislature to the fact of the great growth of government by commission, and points out clearly the importance of doing away with many which have outgrown their usefulness. His treatment of this question is so masterly a setting forth of the facts as to commission government in New York that I quote at some length from it.

"Legislation," he says, "in recent years has enlarged and in many cases duplicated the work until the many officials with their accompanying salaries, expenses and other incidental outlays have grown to proportions inconsistent with a due regard to the interests of the taxpayers. The Board of Mediation and Arbitration received an appropriation (in 1900) of \$17,800 for salaries and office expenses. The Bureau of Labor Statistics received an appropriation of \$32,942. The State Factory Inspector's department received an appropriation of \$121,551; making a total appropriation for these three departments of \$172,293. It would seem that by a consolidation of these three departments into one, to be known as the Department of Labor, the work done by each of the present departments could be more efficiently performed and at a very much less expense than is now possible. In my opinion at least \$72,000 would be saved by such a union and the great interests of labor be better conserved." The State Board of Charities is composed of twelve members, each of whom receives \$10 per day for his service. The appropriation during 1900 for this purpose was \$51,620. If these duties were given to a single commissioner appointed by the governor it is estimated that a saving of \$25,000 per year could be effected. A saving might be effected by doing away with the Prison Commission, in the opinion of Governor Odell, of \$10,000. In discussing the State Forestry Preserve Board and Forestry, Fish and Game Commission he says: "There was appropriated by the last legislature for the salaries and office expenses of the Forestry, Fish and Game Commission the sum of \$82,875. This includes the expenses of printing and publication of reports, salaries of commissioners and employees and other expenses incidental to the maintenance of hatcheries and legal expenses. Aside from the sum of \$250,000 appropriated for the purchase of lands and expenses of the Forest Preserve Board, there were expended for other salaries and office expenses over \$14,000 and paid for additional counsel \$12,000. The saving of expenses which would undoubtedly follow consolidation would amount to probably \$35,000."¹

The experience of New York in this matter has not been exceptional. The evils complained of there might be duplicated in any one of a half dozen of our more populous states, and in all of them to some degree.

Following these vigorous recommendations of Governor Odell, the Forest, Fish and Game Commission and the Forest Preserve Board were

¹Message of Governor Odell, New York, 1901.

consolidated and put under a single commissioner. The Bureau of Labor Statistics, Board of Mediation and Arbitration and Department of Factory Inspection were likewise consolidated under a single commissioner. The Prison Commission, consisting of eight members, and the Board of Health, consisting of three members, were each reorganized and put under single commissioners. It is too early yet to speak of results.

The experience of Iowa in the matter of control of her public institutions is a case in point. The Board of Control made its first biennial report in 1899, which includes a statement of the expenses of carrying on the institutions for two years, one under the old plan and one under the new. It shows that for the eleven charitable, penal and reformatory institutions there was expended for the year ending June 30, 1898, a total of \$1,148,126.80. For the same institutions the expense of the following year was a total of \$966,492.95, this being \$181,633.85 less than for the previous year. The saving of expense was effected at no sacrifice of efficiency, but the universal verdict in that state is that the service was greatly improved. The board in its report says: "A full appreciation of this reduction in expense cannot be understood without reference to the fact that there has been an advance in the prices of supplies of all kinds during the last year of from twenty to thirty per cent, as is shown by the commercial reports. Had the prices of two years before prevailed, it is safe to say that there would have been a reduction of \$130,000 more than the above. It is but stating a fact that the board has not in a single instance endeavored to reduce the cost of support of the institutions at the expense of efficiency of service to the inmates."¹

The experience of the state of Washington corroborates the above. In 1897 Washington's public institutions, five in number, passed from the control of separate boards of trustees to the care of a single board of control. The cost of maintaining these institutions under the old plan of directors for the four years ending in March, 1897, was \$1,021,531, or an average daily cost for all institutions of fifty-two cents per capita. For three and one-half years, under the board of control, the cost was \$799,303, or an average per capita cost of forty cents per day.²

What is shown to be true in these states is true of commission government everywhere. The people of the state universally get less service for the money expended, from this form of administration, than from any other. And this is true, irrespective of the integrity and carefulness of the individual members. It is the defects of the system which are here complained of—a system under which the best intentioned officials cannot work efficiently and economically.

The boards are practically irresponsible bodies. They are beyond the control of the people, or of any one who is responsible to the people for their actions. Appointed as they are for definite terms of office, they cannot be removed during the term except after an investigation, which amounts to an impeachment. The governor who appoints them, in many cases, can only appoint a single member, the terms of the others extending beyond his own, so that he can neither mold the policy of the board nor can he be held responsible for it. "The people of the state might have a

¹First Biennial Report, Iowa Board of Control, p. 27.

²Bulletin, Iowa Board of Control, October, 1900, p. 1.

most decided opinion about the management and work of the departments and give emphatic expression to that opinion, and yet be unable to control their action. The system gives great power without proper responsibility, and tends to remove the people's government from the people's control. All must agree that the safe and democratic form of government is to make these administrative officers in some way responsible to the people."¹

Massachusetts furnishes us with an instance of powerlessness of the people to control these commissions. Gross mismanagement was complained of in the prisons of that state. But upon investigation it was ascertained that the prison commissioners could not be reached after their appointment, except at the trouble and expense of a judicial investigation, and nothing was done. The Board of Supervisors of Statistics of Massachusetts was organized in 1877, composed of certain *ex officio* officers, its duties being to have general supervision over all matters relating to statistics. It was required under the law to meet regularly at the state house at least once a month. But in the course of fifteen years it met but once, and then did nothing. There being no one to whom the board was responsible, nothing could be done to arouse it from its apathy.

Hon. Seth Low, who certainly speaks with authority upon this question, says: "State commissions for any other purpose than for inquiry are the most dangerous bodies, because they exercise authority without responsibility. Power without responsibility is always dangerous, but power with responsibility to a constituency, which can readily call it to account, is not dangerous. It is the first requisite of efficient administration." The fact that these commissions are thoroughly irresponsible is more readily appreciated when we call to mind that under the law of appointed offices, where the appointing power must have the consent of any other body to make the appointment valid, the same power must consent to the removal of the officer so appointed, in the absence of express statutory provision to the contrary.² The constitutions of seven of our states provide that the governor may remove for cause any officer appointed by him;³ but the force of such provisions is largely broken when it is considered that the rule of law in such cases is that where removal is to be had for cause, the power cannot be exercised until after the officer has been duly notified, and an opportunity has been given him to be heard in his own defense.⁴ This has been recognized in some of the later legislation, and definite provision is often made for the removal by the government of the officers appointed by him under the acts. But this leaves a large number of commissioners and boards who are out of the reach of anything short of what virtually amounts to an impeachment.

¹Messages of Governor W. E. Russell, 1891, 1892, 1893.

²American and English Ency. Law, Vol. XIX, p. 562.

³Stimson, American Statute Law, Vol. 1, p. 66.

⁴People vs. Freese, 76 Cal., 733.

VI.

English Boards.

Aside from our own experience perhaps the most fruitful field for the study of administrative methods is found in the experience of England in dealing with the questions which in the United States are dealt with by boards and commissions. There is so much in common between the two countries in political heritage and tradition that methods of administration which have proved successful in one may well be considered by the other. It is well known that English cities and towns are better governed than those of the United States, that less corruption obtains, that streets and roads and sanitary conditions are better cared for and that a higher efficiency is maintained among the executive officers. This has been accomplished under a system of government both national and local, of which boards, commissions and councils are the distinguishing features; the interests which belong to state administration in the United States, and are here cared for by boards and commissions, being in England made matters of national concern under the control of the central government. They are entrusted in the first instance to locally elected councils which are under the general control of a few appointed boards, which exercise a central administrative control and constitute an authority "not to do the work, or take the responsibility which belongs to the local executive, but to keep it everywhere in action; to develop and strengthen it; to give advice when asked; to volunteer it when it seems to be required; and in some cases even to compel the local authority to do its duty."¹

The Development of the System. The present system is the result of a development beginning in 1832. Before the reform movement which resulted in the legislation of 1832 and 1834, local government in England was in a chaotic state. It represented the extreme of decentralization, lack of correlation and coördination. The local areas being the product of historical development frequently overlapped one another, both in respect to territory and the duties and powers of the officials. The coming of the reform bringing with it the establishment of the Poor Law Commissions began a work of unification and coördination which has resulted in the local government and other boards, and in a system which, while it is not beyond criticism, is yet a vast improvement over former conditions.

The whole structure rests not upon any single act or law, but upon several. The principal ones are the Poor Law Commission act of 1834, the act of 1848, establishing the Board of Health, the Local Government act of 1871, which established the Local Government Board and gave to it many of the powers of the Board of Health, and the amendments passed in 1888 and 1894, which gave the county and parish a recognized place in the

¹Odgers, *Local Government*, p. 236.

system. These with a number of Municipal Corporation acts and several hundred laws passed during the last thirty years defining duties, have resulted in the present system. Unfortunately for the student as well as the legislator, these have not been gathered into any "code" or volume, but are scattered through the parliamentary reports. At the risk of repeating what is familiar to the student of politics a brief resume of this organization is submitted.

Central Organization. Boards of Education, of Agriculture, of Trade and the Local Government Board have been organized, which with the Secretary of State for Home Affairs, exercise a central control over such interests as educational affairs, agricultural colleges, experiment stations and general interest, labor unions and organizations, statistics, commerce, health, sanitation expenditures, bylaws, highways, public libraries, water supply, museums, gymnasiums, factory inspection, prison inspection and railways. Each of the boards has a president, a parliamentary secretary, a permanent secretary and several assistant secretaries, besides a large staff of subordinate officers in London. Inspectors, medical experts, district auditors and other officers are scattered throughout the kingdom and are in direct communication with their respective boards. The presidents of the Local Government Board, the Board of Agriculture and the Board of Trade are members of the cabinet. In all these boards there are perhaps fifty officers who are subject to change depending upon cabinet changes. All the others are on the civil list and have a tenure practically during good behavior.

The Board of Education was created by an Act of Parliament in 1899 which united what was known as the Education Department and the Science and Art Department into a single board. It has made two reports thus far. The secretary who is its chief officer, has a principal assistant secretary for Elementary Education and one for Secondary Education. The Elementary branch has six assistant secretaries, the Secondary branch four. It administers the school system throughout the kingdom by means of a central control much the same as that of the Local Government Board, which will be described. The principal office is in London.¹ The Board of Agriculture is similarly organized and supervises agricultural interests, including land surveys, veterinary surgery and the agricultural schools and experiment stations. It reports annually to parliament, recommending such legislation as it deems expedient.²

The Board of Trade has been loosely organized for two hundred years, but has only recently performed extensive duties. These have to do with harbors, mercantile marines, finance, commerce and corn returns, railways, fisheries, labor and labor statistics, together with a general supervision of the commercial and economic development of the kingdom. It publishes a weekly journal and compiles much valuable statistical material. The Labor Department publishes a separate report dealing with all questions relating to labor. Mining and factory inspection, and the supervision of reformatory schools, prisons and the police, are taken care of by the Secretary of the State for Home Affairs.

The most important of these boards from an administrative point of

¹Report Board of Education, 1899-1900.

²Report Board of Agriculture, 1900-1901.

view is the Local Government Board. Since its origin in 1871, its powers have been greatly extended until they embrace the majority of the local interests of the citizen.

This board consists of a president who is appointed by the crown and is a member of the cabinet, president of the council, chancellor of the exchequer and two other *ex officio* members from the cabinet. Its central office is in London. It has a permanent secretary, a parliamentary secretary, one hundred under secretaries, clerks and office employes in the London office, besides one hundred and twenty inspectors, auditors and medical officers whose duties bring them into direct communication with all parts of the kingdom. Aside from the president and the *ex officio* members, this is an appointed board. Its subordinates look to the board for their authority. In 1901 the budget of the board for expenses of these officials was £197,085.¹

The act of 1871 vested in this board, (1) All the powers and duties of the then existing Poor Law Board; (2) all the powers and duties of the Privy Council relating to vaccination and the prevention of disease; (3) all the powers and duties of the Home Office in relation to public health, drainage and sanitary matters, baths and wash houses, public and town improvements, artisans' and laborers' dwellings, local government, local returns and local taxation. Since that time at least 100 statutes have been passed which have added enormously to the duties of the Local Government Board.²

The various local administration bodies in England are under the control of the board. These local bodies consist of county councils for administrative counties, municipal corporations for county boroughs and for non-county boroughs, urban district councils for urban districts other than boroughs, rural district councils for rural districts, parish councils for parishes having a population of 300 or if with less population having a council by special grant from the county council, and parish meetings for every rural parish not comprised in any urban district or borough. All these councils are elected, the term of office being one year in the case of parish councils, and three years in the other councils, one-third retiring each year. There are also 649 unions for poor law administration which incidentally perform many other duties. The union is defined to be "a parish or union of parishes for which there is a separate Board of Guardians."³ Since 1894 these guardians have been elected by parochial electors, their number being subject to change either by the Local Government Board or the County Council. The term is three years, one-third retiring each year. Their duties extend to relief of the poor and supervising the management of workhouses, pauper schools, hospitals and asylums in the

¹Whittaker's Almanack, 1901. Art. Local Government.

²Annual Reports of Local Government Board, 1871-1901, in British Sessional Papers; Hansard's Parliamentary Debates, 1888 and 1894; Odgers' "Local Government" (1899), English citizen series; Chambers' Local Government (1892); Maltbie's "Local Government of Today" (1897), "The Local Government Board," Pol. Sci. Quart., Vol. XIII; Young's "Centralization in England," Annals Am. Acad., Vol. X; Goodnow's Comparative Administrative Law; Whittaker's Almanack and Hazell's Annual for Recent Statistics; Shaw's Municipal Government in Great Britain.

³52 and 53 Vict. C. 63 S. 16.

district. These boards are closely related to one another and to the Local Government Board in London.

It will be seen from the above statement that the English system is one of appointed boards, and elected councils which partake of the nature of a board. These have been the result of recent legislation and have done much to correct the "chaos as regards authorities as regards rates" and "the worse chaos as regards areas" which formerly existed. This has been accomplished very largely by reason of the close relation which exists between the local and central boards. Central administrative control is a distinguishing feature of the relation. The enforcement of law and the caring for public institutions are made a matter of national concern. The local boards and officers are appointed or elected subject to the approval of the national government; they hold their offices at its pleasure, and must submit much of their legislation for its approval. There are further reasons for success. The members of many of the boards are many of them men of large experience in administrative affairs. They remain in service for long terms. Statistical and other information is gathered by men of trained ability and experience. That the system has been very generally successful is not to be denied. Good government and efficient administration both in city and country have resulted. This success is due, however, not so much to the system of board-council government as to other causes and the conditions under which the system works. These reasons and conditions are:

1.—*Central Control.* The powers of the Local Government Board are all prevailing. They extend to the control of (1) investigations and inquiries, (2) appointment and removal of subordinate officers, (3) approval of bylaws and loans, (4) audit of local accounts, and many other disciplinary matters. This control is secured through a corps of one hundred and twenty inspectors, medical officers and auditors who are assigned to various districts throughout the country. The Local Government Board is advised of the conditions in the districts by means of the annual reports of the inspectors, and special investigations made from time to time. By this means the Central Board is both kept advised of the needs and conduct of the inferior boards and is kept in close touch with the doings of its own officials. These annual reports are incorporated into the report which the Local Government Board is required to make each year to parliament.

The work of these inspectors appears to be thoroughly done. The report of Mr. Phillip Bogenal, inspector for the district comprising the union counties of Norfolk and Suffolk and parts of Essex and Cambridge for 1899, occupies ten pages of the annual report of the Local Government Board. It deals with pauperism, Friendly Societies, statistics of longevity, old age pensions, depopulation of rural districts, work and wages, condition of workhouses and structural alterations, housing of the poor children, nursing, burial of paupers, gypsies, East and West Flegg incorporation, the Brabazon scheme and vagrants.¹ The reports of the medical department are published in a separate volume, the report for 1900 containing 649 pages in addition to twenty-four pages of introductory matter.

¹Twenty-ninth Report Local Government Board, pp. 84-94, app. B.

Besides the annual reports made by these officers, special investigations are made during the year. In 1899 the board caused 1,167 of these special investigations to be made by inquiring inspectors. The majority of these special investigations had reference to applications from sanitary authorities for sanction to the borrowing of moneys for carrying out works of a permanent character under the provisions of the Public Health Acts, the Public Libraries Act, the Baths and Washhouse Act, the Allotments Act, the Electric Lighting Act, the Housing of the Working Classes Act, the Museum and Gymnasium Act, the Highways and Bridges Act, the Private Street Works Act and Local Acts.¹ The method pursued is to hold the inquiry in the locality affected, ample notice being given and the utmost publicity obtaining, all parties interested being given a hearing. The matter is then reported upon, the board making a final decision.² The following from the Local Government Board report for 1900 will illustrate the manner of procedure: "On March 14 I held an inquiry in conjunction with Mr. Wilby Preston, the inspector for the South Midland District, with regard to the accommodation and equipment of the workhouse. The guardians having for some years refused to move in any single direction for the improvement of the internal arrangements of the house, the Local Government Board directed the inquiry to be held. The inquiry was largely attended. Ten witnesses were examined. Having considered the report of the inquiry, the Local Government Board notified the guardians that unless they were prepared to submit promptly proposals for adequately dealing (1) with the accommodation of the sick, (2) providing separate accommodation for vagrants and a receiving ward, (3) sending the children out to school, (4) the provisions of new laundry offices, they would feel compelled to take steps with a view to the dissolution of the Incorporation."

The decisions of the Board after hearing the reports of these special investigations have the force of law, and are rigidly enforced. The reports of nearly every one of the Inspectors for 1900 contain instances like those cited above, which furnish abundant evidence of the exercise of this power on the part of the Local Government Board.

Further, all local authorities having power to levy rates, tolls, taxes or dues must make returns to the Board of all sums levied or received and all expenditures. By this means the Board is at all times kept in touch with each local body.

The Legislative functions of the Board are large. Numerous acts require the sanction of the central administration department before they are valid, and in case of disapproval the law is rendered null. No law imposing an obligation upon an individual can be enforced by a local authority without such approval.³ In 1899 there were 515 series of such laws approved dealing with animals for hire, hackney carriages, omnibuses, cabmen's shelters, public bathing, open bathing places, public baths, public wash-houses, burial grounds, cemeteries, mortuaries, hop, fruit and vegetable pickers, lavatories and sanitary conveniences, common lodging houses, houses let in lodgings, markets, nuisances, removal of noxious matter, offensive trade, sanitation, pleasure boats, pleasure grounds, in-

¹Twenty-ninth report L. G. B., p. cxxxvii.

²Twenty-ninth report L. G. B., pp. cxlv and cxlv.

³Pol. Sci. Quarterly, Vol. XIII, p. 250.

fectured persons, slaughter houses, streets and buildings, tents, vans, and sheds, whirligigs, swings and shooting galleries.¹

Not only does the Board pass upon much local legislation, but it also influences the personnel of the legislators. The qualifications, duties, method of appointment and removal, tenure and salaries of the members of the local boards and their officers are fixed by this Board. It may remove any paid officers. It may also compel local authorities to enforce the law in cases of laxness.

A very close supervision is maintained over the question of pure food under the Sale of Food and Drug Acts of 1875. In 1900 the public analysts appointed under this act by the Local Government Board and reporting to it, examined 53,056 samples of food and drugs. They reported against 4,970 of these and instituted proceedings against 3,110. In 2,608 cases fines were imposed amounting in the aggregate to \$6,257. The samples examined included such staple articles of food as milk, bread, flour, butter, coffee, sugar, tea and lard.²

The eleventh report informs us "In one case a town council at first refused to have samples (of food) analyzed, saying they had received no complaints, but afterwards *on our insistence* decided to make the experiment."³ The orders which it issues in such cases have the force of law both as to original and provisional orders.

The powers of the Board over local areas are very extensive. It may divide a district into wards, decide the number of councilors to be elected from each, and determine and apportion the number of county councilors. Poor Law areas are entirely under its jurisdiction. It has power to change boundaries and names and combine or separate local areas. Alterations were made in 1899 in the county electoral divisions in the counties of Northumberland, East Sussex, and the North Riding of Yorkshire; and in the town of Southport. In each instance a local inquiry was held by the Inspector after public notice.⁴ It has power to "make rules, orders and regulations for the management of work-houses, the education of poor, children, the nature and amount of relief, the making of contracts and keeping of accounts."⁵

It exercises an important control over local finance. Through its thirty-six auditors it is kept informed as to the condition of the finances of the locality and may vitally affect them through its power of approval of loans and compulsion. Neither the size of the loan or the length of time for which it is contracted affects these powers if the subject of the loan is within its jurisdiction. In 1899 the loans approved by the Board amounted to £10,026,336.⁶ The enumeration of the subjects of these various loans occupy over fifty quarto pages of the report of the Board and related to such objects as sewerage, water supply, fire brigade, street improvements, working class dwellings, hospitals, main road improvements, refuse destructor, gas works, lands for public walks and pleas-

¹Twenty-ninth report L. G. B., p. cxxxvii.

²Twenty-ninth report L. G. B., pp. cxliv and cxlv.

³Eleventh report L. G. B., p. xcix. For further examples see also twenty-ninth report, p. cxlii, et. seq.

⁴Twenty-ninth report L. G. B.

⁵Pol. Sci. Quart., Vol. XIII, p. 242.

⁶Twenty-ninth report L. G. B., p. cxlv.

ure grounds, hydrants, sea defense, slaughter houses, mortuary and post-mortem rooms, public offices, depots, disinfectors, public baths, municipal buildings, drainage, public libraries, electric lighting, technical instruction and museums and gymnasiums.¹

2. *Tenure of Office.*

With the exception of the President, the officials of the Local Government Board have a tenure practically during good behavior. In the first instance they are chosen because they have marked qualifications for the office, and rotation in office seems to have no place in the English mind.² "Heads of police, fire, water, gas, sanitary and other departments are men of special fitness and training who are selected for their administrative ability as well as for expert knowledge and whose security of tenure for so long as they deserve it adds to their faithfulness and usefulness."³ The town clerk has a large salary and holds his office for life. A vacancy in any of the offices is filled generally by a moving forward all along the line in the departemnt. Thus upon the death of Sir Richard Thorne-Thorne, K. C. B., W. H. Power F. R. S., the assistant medical officer was appointed in his place and the promotion extended to the lowest offices in the department.⁴ Not only is this true in the Central Board, it extends to the local Boards as well. "Once seated in the council, faithful and efficient service may reasonably be counted upon to make a man's place secure from term to term, for as long as he is willing to serve, and he has before him the prospect of aldermanic honors and his crowning year of dignity in the mayor's robes." Before the last election there were 31 members out of 137 in the London County Council who had served the whole twelve years of the council's existence.⁵ Of the present Council (the fifth) seventy-six were in the fourth council and fifty-three were in both the third and fourth,⁶ giving them tenures of three and six years respectively. This same rule holds, though not in the same degree, in the rural counties and other areas. Inquiries were directed by the writer to the chairman of several of the county and municipal councils bearing upon the character of the members of the councils, tenure of office and experience in governmental affairs. The statements which follow on these points are based upon this correspondence. In answer to an inquiry concerning the tenure in County Councils, Mr. Andrew Johnston, Chairman of the Essex County Council, wrote, "Councilors are elected for three years, but the retiring ones are not often opposed if they wish to come in again. Aldermen are generally re-elected if they wish to be." The legal tenure of three years, one-third retiring each year, makes of these councils practically continuous bodies.

3. *Character of the Membership.*

The tenure and salary connected with the subordinate offices of the Local Government Board attracts to the service the best of talent. "The public health and medical department is under the guidance of a distinguished member of the Royal Society," wrote Chalmers in 1885, and this

¹Twenty-ninth report L. G. B., app. pp. 520-577.

²See Shaw's *Municipal Government in Great Britain*, Chaps. II and III, and Goodnow's *Comparative Administration Law*.

³Shaw's *M. G. B.*, III (see).

⁴Twenty-ninth report L. G. B., p. ccv.

⁵Report London County Council, 1900-1901, xiv.

⁶Whittaker's *Almanack*, 1898 and 1902.

has been true since that time. The auditors and inspectors are on the civil service list and are specially trained in their departments. They are continually under the surveillance of the Board. The chairman of the London County Council in his address for 1900 referred to the untiring devotion and efficient service of the paid staff of the council. These men are not allowed to make any money outside their salary and are required to give their whole time to the service.¹

The local councils also attract men of experience in affairs. Though the service is unpaid men are willing to give practically their whole time to it. "Nothing can be simpler than the council's standard. You are to devote an immense amount of time and you get nothing for it."² Such men as John Burns, Lord Farquhar, Sydney Webb, Lord Rosebery, E. J. Homeman, D. S. Waterlou, T. Wiles, Sydney Gedge, Dr. Napier, T. McKinnon Wood, W. H. Dickman, W. C. Parkinson, and many others who are of prominence and experience in practical affairs have been members of the council and have given thus of their time.³ The councils outside London cannot boast so brilliant a list of names, yet in these, men of trained ability are not wanting.

In response to inquiries addressed to the chairman of several of the County and municipal councils the following facts appear. The County Council of Essex is composed of one hundred and five councilors. Of these seventy-five belong to the business and commercial classes, three or four to the professional classes, while pretty well all the council have had experience in governmental affairs as members of parliament, members of district councils, members of school boards and guardians of the poor. In the West Riding of Yorkshire seventy-three of the council belong to the commercial classes, eleven to the professional classes, while two are members of the House of Commons and one has a seat in the House of Lords. In the Kent County Council the business and professional classes are represented by about twenty-five per cent respectively, and this council also contains members of both houses of Parliament. It will be seen from these examples that the character of the membership of the councils is very high. Many of these men have succeeded in business and bring to the council the benefit of their training in practical affairs.⁴

One reason for the high character of the councilors is found in the views which are held concerning the holding of public office. This is looked upon in an entirely different light in England and in the United States. The fact that the service is unpaid may partly account for this. But the further fact that in England there are fewer offices must also be considered. The subordinate councils afford almost the only offices of dignity outside of Parliament, and they are sought by men who in the United States could not be persuaded to sit in similar bodies. It also gives the people a greater number of men from which to choose their officials. The office of overseer of the poor is accounted a place of honor and the office of Justice of the Peace, shorn as it is of many former powers, is still a place of dignity.

¹Report L. C. Council, 1900-1901, xlii.

²Report London County Council, 1900-1901, xiv.

³Shaw's Municipal Government in Great Britain. The first London Council possessed as high an average of ability as the House of Commons. Shaw, p. 246.

⁴See Shaw, Chap. III, p. 53 and 54.

4. *The Leisure Class.*

The Leisure Class in England has always exerted a powerful influence upon governmental affairs. The unpaid service which exists almost universally is based upon the fact that a sufficient number of men can be found who are willing and have the leisure to devote the time to public service. And such has proved to be the case, many of this class being chosen to serve upon the boards and councils. For instance the duties of a London County Councilor take practically the whole of one's time. He serves without pay and therefore must either be a man of leisure and means or be supported by his constituency, which is true only in a few instances. The members of the council in most cases give faithful service. Lord Salisbury in 1897 said in a public address that the London County Councilors "are to a great extent men who give themselves up wholly to the matter,"¹ and T. McKinnon Wood in commenting upon the speech said that a plea of guilty must be extended to the charge that many of the members devote the greater part of their time to work.² "I have never concealed from myself that a member must practically devote his whole time to this exacting but noble mission."³ This is further borne out by the fact that the business of the council is delegated to a number of standing committees to which the members are assigned. That the work is considerable the following will evidence: "The meetings of the council have numbered 35 (in 1899) whilst those of the committees have been 646 and the subcommittees 790. These figures represent a large amount of work. Excluding the holidays they work out at an average of seven meetings on every one of the five working days of the week. The attendance of the members has been as follows: At council meetings 4,085 or an average of 117 at each meeting out of a total of 127."⁴ The attendance upon committee meetings showed a like percentage.

Similar facts can be shown with regard to rural counties and municipalities. The town council is generally composed of retired business men or men who still conduct their own business, but with sufficient leisure to give time to public affairs.⁵ An unsigned article in the second volume in *Progressive Review*⁶ (1897) states that though the County Councils Act of 1894 swept away the property qualifications yet the rural parson, the land owner and the half-pay retired military officer compose these councils throughout the Kingdom. Their membership is confined to the "well-to-do classes." The laboring man may get on the parish council but in the councils above this he has neither the leisure nor the opportunity of serving. In the writer's own parish nobody but men of leisure belong to the council and the same is true of other councils. A member of the Norfolk County Council testifies that "our county council consists almost entirely of land owners and large farmers." Nobody but a man of "fairly well-to-do leisure" can afford to belong.⁷ The facts concerning the counties of Essex, Yorkshire and Kent are as follows: In the Kent

¹Speech at National Union of Conservative Associations in Albert Hall, November, 1897.

²*Contemp. Review*, 73:202 et. seq.

³Address of Chairman, Report L. C. C., 1900-01, p. 1.

⁴Address W. H. Dickman, Chairman, L. C. C. Report 1899-1900, p. 1.

⁵T. McKinnon Wood *Art. Cit.* Shaw, Chap. III, p. 54.

⁶*Prog. Rev.*, Vol. II. This review has but two volumes.

⁷*Gov. by Horse and Trap. Prog. Rev.* Vol. II.

County Council there are no members who belong to the laboring classes. Fifty per cent belong to the leisure classes, by which term the chairman intends to include owners of property, members of board of guardians, justices of the peace, agriculturalists and directors of public companies.

In the Council of the West Riding of Yorkshire there are thirty-six out of one hundred and twenty councilors who belong to the leisure classes, including two clergymen, while none belong to the laboring classes. Out of the one hundred and five councilors of the county of Essex none belong to the laboring classes. "The ordinary workingman could not give the necessary time and the work is not exciting enough to tempt the Trade Union officials." Twenty-six belong to the leisure class, the term being made to include those "not having any regular business by which they live but almost all of these have other public avocations or engage in philanthropic work of some kind." This last remark will throw some light upon the character of the members of the leisure class who serve upon the councils. Conversations with William Wyndham, British consul at Chicago, and several other well informed Englishmen, reveal the fact that this same condition prevails throughout the Kingdom. The town and county councils are composed of men of the "highest standing for wealth, integrity and honesty as well as leisure." The testimony of Mr. Shaw already referred to, that the reputable business man either still in charge of his business but with leisure for government affairs, or who has retired from business and can give most of his time to these matters is largely represented on the councils, was very generally corroborated.

If a reason is sought why board government is successful in England and comparatively a failure in the United States these differences may suggest the reason. For they are vital differences. It does not follow because a high degree of success has been attained under English conditions that commission government will be successful where many of the conditions making for its success do not obtain.

England's system as has been seen, rests upon a central control which reaches from London to the farthest point in the United Kingdom, unifying and coördinating it. Its officials are for the most part on the civil service list and so are taken out of the realm of politics. Its heads of departments are skilled in local governmental affairs. In the local areas aside from the fact that almost every action is subject to review from the central authority, the councils are made up of men who have not only the leisure to devote to the affairs of the municipality or county, but who also have the disposition to give their time to them, coupled with large abilities arising from their training in business and politics. Add to this the fact that such men are kept in office for long terms and that they consider their positions both responsible and honorable and we have a condition of affairs which is not paralleled in any other country, certainly not in the United States.

England is the only important country which has adopted the board-council system of government. All of the continental countries of Europe have more centralized systems. In fact the great reason for the success

of the English system lies in its central administrative control over the local boards, which has much the same effect upon their management of local affairs as does the control exercised by the Iowa board above cited. "Whatever view the reader may take as to the desirability of extending or curtailing the jurisdiction of the Board in other matters, there can surely be only one opinion as to the efficacy of an independent and searching audit," wrote Mr. Odgers in 1899. "Of all expedients for the preservation of public property it is the most simple, ready and self-acting."¹ And this is as true of other departments as of finance.

So long as our present views of office holding and its uncertain tenure exist, and so long as our boards and commissions lack in trained ability and central control, success is not to be expected in the degree in which it obtains where these conditions prevail.

¹Local Government p. 251.

VII.

Conclusion.

It was suggested in the introduction that the board system had taken power which is properly executive and placed it beyond the reach of the executive department of our state government, with a resulting decrease in the power of that department. It may be urged that this is no hardship, and that there is no need for a stronger executive than we have at present. It is submitted, however, that the present condition of affairs is such that the rights and liberties of the people can only be guaranteed to them by a restoration to the executive of at least a part of this power. The number of officers required to carry on the complex affairs of modern administration is so great, and the special abilities needed so varied, that it is manifestly undesirable to elect all of them. The people are seldom in a position to know whether a given candidate for office has the special fitness required to perform the duties of the office which he seeks, and if all of them were elected it would impose too great a burden upon the electorate. The ordinary citizen would either have to become a specialist in administration or swallow his party ticket whole, regardless of fitness. These officers in the main should be appointed. To keep them responsible to the people they should in some manner be made directly responsible to those servants of the people who are elected; and these in turn should be responsible to the people who elect them.

Since the duties which these boards now perform are essentially executive and administrative, the appointing power should remain in the executive of the state. But why is it necessary to continue the great number of them? Would not better service and full responsibility be secured, if the chief executive were to appoint heads of departments, who should at all times be responsible to him and subject to his removal? The advice and consent of the senate may well be made necessary for appointment. It would be a gain in responsibility if the removing power were to be placed in the hands of the governor. If these heads of departments should then appoint deputies, the work could be taken care of at less expense, and it is believed, at a gain in efficiency.

Some plan of this nature would place the governor where he belongs as the chief executive of the state. It would give him more power, but it could be coupled with such responsibility for the whole of the state administration that the people would be possessed of an effectual check upon his conduct. The principle here urged is a familiar one in the government of most of our large cities today, and in our federal government, and is being adopted in the administration of our new possessions. Its wisdom has been questioned by those who fear the results of a strong executive in government. But it is certainly better to be able to say when a question is raised as to official acts, "you did this," or "you failed to

do this," "you are responsible for this act or this failure of duty," than to be compelled to say, as is so often the case, "it is bad enough, but who is to blame?"

"It is self evident that the affairs of government cannot be well conducted unless there is an executive head upon whom responsibility therefor is imposed. It is equally clear that such responsibility cannot be exacted without the grant of corresponding power. It may be said that it is dangerous to clothe him with so much authority. The answer is that such power must be lodged somewhere if good government is to be attained, and wherever it is placed it is essentially executive in its nature. The mayor is the chief executive of the city, and therefore he is the proper officer to exercise it. Without it there can be no efficiency in the performance of his duties."¹ The governor, like the mayor in the city, is the chief executive in the state. The power now exercised by these various state officials and commissions, is "essentially executive in its nature," and their jurisdiction is state-wide. If the clothing of the governor with more power should result in its misuse we could at least place the blame where it rightly belonged. But the possession of much power, with a well defined and clearly understood responsibility for its use, proverbially makes its possessor conservative. Far from resulting in danger to the public interests, it would give efficiency, economy, responsibility and system to administration, and would best secure what Mr. Webster has called "The people's government, made for the people, made by the people and answerable to the people."

¹Report of Commission to devise plan for city government in Philadelphia, 1878.

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